



AGREEMENT

BETWEEN

**COMMONWEALTH OF AUSTRALIA, as represented by
and acting through the Department of Sustainability
Environment, Water, Population and Communities ABN 34
190 894 983**

AND

in relation to Services for

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THIS AGREEMENT is made on _____ 200

PARTIES

COMMONWEALTH OF AUSTRALIA ('the Commonwealth') for the purposes of this Agreement represented by and acting through the Department of Sustainability, Environment, Water, Population and Communities ABN 34 190 894 983 ('the Department')

AND

_____ of _____
ABN -----_ ('the Service Provider')

[#NB. The Australian Business Number (ABN) of the Service Provider must be included.]

{: Insert the full name, address and ABN of the Service Provider, depending on the following cases:

- (1) if the Service Provider is an individual, insert the persons full name, ABN and address;
- (2) if the Service Provider is a company, insert the company's full name, its ABN, its trading name (if different from its full name), its State or Territory of incorporation, the address of its registered office in the form:
"XYZ Pty Limited, A.B.N. XX XXX XXX XXX, (trading as ABC), a company incorporated in the State /Territory of {: **insert jurisdiction**}, and having its registered office at {: **insert address**"}"; or
- (3) if the Service Provider is a partnership, include the firm name and ABN of the partnership and full names and addresses of all partners seek guidance where this is impractical, such as for a large accounting firm);
or
- (4) if the Service Provider operates under a business name, insert the name, ABN and address of the company, partners or individual and add "trading as [insert business name]"; or
- (5) if the Service Provider is: an incorporated association; a non-Australian registered company; a trust; a State or local government agency, authority or department (however described); an individual; or purports to be a 'joint venture' then obtain as much information about the relevant organisation's full legal status and ABN: in any case, if in doubt (especially if it appears to be an unincorporated association) then seek legal assistance through the Legal Services Branch to ensure that the relevant organisation has been properly described. }

PURPOSE

- A The Department requires the provision of the Services specified in the Schedule
- B The Service Provider has fully informed itself on all aspects of the work required to be performed and has submitted the proposal and quotation referred to in Item A of the Schedule [*Proposal and Quotation*]
- C The Commonwealth has agreed to engage the Service Provider to provide the Services upon the terms and conditions contained in this Agreement

OPERATIVE PART

1. INTERPRETATION

- 1.1 In this Agreement, unless the contrary intention appears:

ABN	has the same meaning as it has in section 41 of the <i>A New Tax System (Australian Business Number) Act 1999 (Cth)</i> ;
Additional Services	means any services that the Department may, from time to time, require the Service Provider to perform in accordance with the provisions of this Agreement which are of the same nature as the Services but do not, at the time of the Department's request, form part of the Services;
Agreement	means this document and includes any schedules or annexures;
Business Day	in relation to the doing of any action in a place, means a weekday other than a public holiday in that place;
Commencement Date	means the date on which this Agreement is made, unless otherwise specified in Item E [<i>Commencement and Timeframe</i>];

Commonwealth Material	<p>means any Material:</p> <ul style="list-style-type: none"> (a) provided by the Commonwealth to the Service Provider for the purposes of this Agreement; or (b) derived at any time from the Material referred to in paragraph (a);
Confidential Information	<p>means:</p> <ul style="list-style-type: none"> (a) the information described in Item S of the Schedule; and (b) the information that is agreed between the Parties after the Date of this Agreement as constituting Confidential Information for the purposes of this Agreement.
Conflict	<p>means any matter, circumstance, interest or activity affecting the Service Provider which may or may appear to impair the ability of the Service Provider to provide the Services diligently and independently;</p>
Contract Material	<p>means all Material:</p> <ul style="list-style-type: none"> (a) created for the purposes of this Agreement; (b) provided or required to be provided to the Department as part of the Services; or (c) derived at any time from the Material referred to in paragraphs (a) or (b);
Department	<p>includes the Department of Sustainability, Environment, Water, Population and Communities and any other department or agency of the Commonwealth which may from time to time be responsible for the administration of this Agreement;</p>
Instalment	<p>means an instalment of fees payable under clause 3 in relation to the satisfactory performance of part of the Services;</p>

Intellectual Property	includes all copyright (including rights in relation to phonograms and broadcasts), all rights in relation to inventions (including patent rights), plant varieties, registered and unregistered trademarks (including service marks), designs, and circuit layouts, and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields but does not include Moral Rights, the rights of performers or rights in relation to Confidential Information;
Material	means the subject matter of any category of Intellectual Property rights;
Moral Rights	includes the following rights of an author of copyright Material: <ul style="list-style-type: none"> (a) the right of attribution of authorship; (b) the right of integrity of authorship; and (c) the right not to have authorship falsely attributed;
Official Information	means any information developed, received or collected by or on behalf of the Commonwealth of Australia through its agencies and contracted providers;
Official Resources	includes: <ul style="list-style-type: none"> a. Official Information; b. people who work for or with the Department; and c. assets belonging to (even if in the possession of contracted providers) or in the possession of the Department;
Personal Information	has the same meaning as the term ‘personal information’ in the <i>Privacy Act 1988</i> (Cth), that is: information or an opinion (including information or an opinion forming part of a database), whether true or not, and whether recorded in a material form or not, about a natural person whose identity is apparent, or can reasonably be ascertained, from the information or opinion;
Party	means a party to this Agreement;
Personnel	means a Party’s officers, employees, agents, contractor staff or professional advisers engaged in the performance or management of this Agreement;

Project Officer	means the person specified by name or position in Item K [<i>Project Officer</i>] or any substitute notified in writing to the Service Provider;
Security Classified Information	means Official Information that, if compromised, could have adverse consequences for the Department; and
Security Incident	means a security breach, violation, contact or approach from those seeking unauthorised access to Official Resources.
Services	means the services described in Item B [<i>Services</i>] and includes the provision to the Department of the Material specified in Item C [<i>Required Contract Material</i>];
Service Provider	Means the party who undertakes to provide the Services in accordance with this Agreement;
Specified Personnel	means the Service Provider's Personnel specified in Item J [<i>Specified Personnel</i>] who are Personnel required to perform all or part of the work described in Item J [<i>Specified Personnel</i>]; and
writing	means any representation of words, figures or symbols capable of being rendered in a visible form.

1.2 In this Agreement, unless the contrary intention appears:

- (a) words importing a gender include any other gender;
- (b) words in the singular include the plural and words in the plural include the singular;
- (c) clause headings are inserted for convenient reference only and have no effect in limiting or extending the language of provisions to which they refer;
- (d) words importing persons include a partnership and a body whether corporate or otherwise;
- (e) all references to dollars are to Australian dollars;
- (f) reference to any legislation or legislative provision includes any statutory modification, substitution or re-enactment of such legislation or legislative provision;

- (g) where any word or phrase is given a defined meaning, any other part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning;
 - (h) reference to an Item is to an Item in the Schedule;
 - (i) the Schedule and any attachments form part of this Agreement;
 - (j) where any conflict arises between the terms and conditions contained in the clauses of this Agreement and any part of the Schedule (and attachments if any), the terms and conditions of the clauses prevail;
 - (k) where any conflict arises between any part of the Schedule and any part of an attachment, the Schedule prevails; and
 - (l) reference to the Schedule (or an attachment) is a reference to the Schedule (or an attachment) to this Agreement, including as amended or replaced from time to time by agreement in writing between the Parties.
- 1.3 This Agreement records the entire agreement between the Parties in relation to its subject matter.
- 1.4 No variation of this Agreement is binding unless it is agreed in writing between the Parties.
- 1.5 Any reading down or severance of a particular provision does not affect the other provisions of this Agreement.
- 1.6 This Agreement shall be construed in accordance with the laws of the Australian Capital Territory.
- 1.7 The terms of this Agreement apply on or from the Commencement Date.
- 1.8 A provision of this Agreement shall not be construed to the disadvantage of a Party solely on the basis that it proposed that provision.

2. PROVISION OF SERVICES

- 2.1 The Service Provider agrees to:
- (a) perform the Services to a high standard and in accordance with relevant best practice, including any Commonwealth and industry standards and guidelines specified in Item D [*Standards and Best Practice*];
 - (b) comply with the time frame for the performance of the Services specified in Item E [*Commencement and Time-frame*]; and

- (c) liaise with the Project Officer, provide any information the Project Officer may reasonably require and comply with any reasonable request made by the Project Officer.

[Note: If there is the possibility that the Department may require the Service Provider to perform services or tasks other than those included in the Services, you should include clauses 2.2 and 2.3 in the Agreement. If not, you should delete these clauses and the definition of “Additional Services”. If you include these clauses you must ensure that doing so is consistent with any tender documentation previously issued in relation to the procurement and ensure that you provided the information required in these clauses. Delete this note]

- 2.2 After the Commencement Date, the Department may require the Service Provider to perform Additional Services from time to time, in which case the Service Provider must supply them to the Department from the date specified by the Department. Any Additional Services required by the Department will be of the following type:

[Note: Insert the nature and scope of the additional or ad-hoc services that may be required. Delete this note]

- 2.3 The fees payable by the Commonwealth for any Additional Services will cover the reasonable costs incurred by the Service Provider in acquiring the equipment or material necessary to perform the Additional Services and the Service Provider will be paid the hourly or daily rates specified in Item F of the Schedule in the manner specified in Item F.

[Note: You must ensure that Item F of the Schedule sets out the hourly and daily rates for any Additional Services. Delete this note]

3. FEES, ALLOWANCES & ASSISTANCE

- 3.1 The Commonwealth agrees to:

- (a) pay the fees specified in Item F [*Fees*] in the Instalments (if any) and in the manner specified in Item F [*Fees*];
- (b) pay the allowances and meet the costs specified in Item G [*Allowances and Costs*]; and
- (c) provide the facilities and assistance specified in Item H [*Facilities and Assistance*].

- 3.2 The Commonwealth will be entitled, in addition and without prejudice to any other right it may have, to delay payment or reduce the amount of any Instalment, fees or allowance until the Service Provider has completed to the

satisfaction of the Department that part of the Services to which the Instalment, fees or allowance relates.

- 3.3 The Service Provider agrees to submit invoices for payment, and any supporting documentation required by the Department, in the manner specified in Item I [*Invoice Procedures*].

3A. INTEREST

NOTE: The following clause implements the Commonwealth's payment policy for small business as set out in *Finance Circular No. 2008/10*. It should be included in all procurement contracts with a value of up to A\$1 million (GST inclusive) from a small business except where an exemption set out in *Finance Circular No. 2008/10* applies.

A 'small business' means an enterprise with less than 20 full-time equivalent employees at the date the written contract is entered into. This test applies to the entire business and not just discrete parts of a business group.

If this clause does not apply to your procurement, the title of this clause can be replaced with the word 'Reserved' and the rest of the clause deleted.

For more information on the application of *Finance Circular 2008/10* please contact the Procurement Policy and Reform Section.

- 3A.1 Subject to clause 3A.2, if the Department does not pay an amount payable to the Service Provider under this Agreement by the date the amount is due, the Department must pay simple interest on the unpaid amount in accordance with the following formula:

$$SI = UA \times GIC \times D$$

Where:

SI = simple interest amount;

UA = the unpaid amount;

GIC = the general interest charge daily rate determined under section 8AAD of the *Taxation Administration Act 1953* (Cth) on the day the payment is due, expressed as a decimal rate per day; and

D = the number of days, from the day after payment was due up to and including the day that payment is made (being the day when the Department's system generates a payment request to the banking system for payment to the Service Provider).

- 3A.2 Interest is only payable by the Department if:

- (a) the amount of interest exceeds \$10; and
- (b) the Service Provider has issued a correctly rendered invoice in relation to the interest.

4. TAXES, DUTIES AND GOVERNMENT CHARGES

4.1 Except as provided by this clause, all taxes, duties and government charges imposed or levied in Australia or overseas in connection with the performance of this Agreement shall be borne by the Service Provider.

4.2 In this clause 4, the following terms have the meanings respectively given to them in the *A New Tax System (Goods and Services Tax) Act 1999* ('the GST Act'):

consideration

GST

input tax credit

supply

taxable supply; and

tax invoice.

4.3 The Service Provider warrants that it has an ABN that it has correctly quoted to the Department.

4.4 The Department is registered in accordance with the GST Act and will notify the Service Provider of any change in its GST registration status immediately after it is notified of any such change. The Service Provider must notify the Department in writing of any change to the Service Provider's ABN or GST registration status immediately after it is notified of any such change.

4.5 Unless otherwise indicated in Item F [*Fees*], all consideration payable under this Agreement includes GST for supplies provided by the Service Provider to the Commonwealth in accordance with this Agreement that are taxable supplies within the meaning of the GST Act.

4.6 A Party ('supplier') that makes a taxable supply under this Agreement must provide the other Party ('recipient') with a valid tax invoice before the recipient is required to make any payment under this Agreement relating to the taxable supply.

4.7 No Party may claim from the other Party an amount for which the first Party may claim an input tax credit.

5. SUBCONTRACTORS

- 5.1 The Service Provider agrees not to subcontract the performance of any part of the Services without prior approval in writing from the Department.
- 5.2 The Department may impose any terms and conditions it considers appropriate when giving its approval under clause 5.1.
- 5.3 The Department may revoke its approval of a subcontractor on any reasonable ground.
- 5.4 The Service Provider will ensure that any subcontract for the performance of any part of the Services contains provisions equivalent to clauses 11, 12, 16 and 20 of this Agreement.

6. PERSONNEL AND SPECIFIED PERSONNEL

- 6.1 The Service Provider agrees that the Specified Personnel will perform work in relation to the Services in accordance with this Agreement.
- 6.2 Where Specified Personnel are unable to perform any of the work specified in Item J [*Specified Personnel*], the Service Provider must notify the Department immediately.
- 6.3 The Department may, at its absolute discretion, request the Service Provider to remove Personnel (including Specified Personnel) from work in relation to the Services.
- 6.4 Where clauses 6.2 or 6.3 apply, the Department may request the Service Provider to provide replacement Personnel (including Specified Personnel) acceptable to the Commonwealth at no additional cost and at the earliest opportunity.
- 6.5 If the Service Provider does not comply with any request made under clause 6.4 the Commonwealth may terminate this Agreement in accordance with the provisions of clause 21 [*Termination for Default*].

7. RESPONSIBILITY OF SERVICE PROVIDER

- 7.1 The Service Provider is fully responsible for the performance of the Services and for ensuring compliance with the requirements of this Agreement, and will not be relieved of that responsibility because of any:
 - (a) involvement by the Commonwealth in the performance of the Services;
 - (b) payment made to the Service Provider on account of the Services;

- (c) subcontracting of the Services; or
- (d) acceptance by the Department of replacement Personnel (including Specified Personnel).

7.2 In carrying out the Services, the Service Provider agrees to liaise, provide information and comply with directions of the Project Officer as reasonably required from time to time.

8. COMMONWEALTH MATERIAL

- 8.1 The Commonwealth agrees to provide Material to the Service Provider as specified in Item L [*Material to be Provided by Commonwealth*].
- 8.2 The Commonwealth grants to (or will procure on behalf of) the Service Provider a royalty-free, non-exclusive licence to use, reproduce and adapt the Commonwealth Material for the purposes of this Agreement.
- 8.3 The Service Provider agrees to ensure that all Commonwealth Material is used strictly in accordance with any conditions or restrictions set out in Item M [*Use of Commonwealth Material*], and any direction by the Department.

9. INTELLECTUAL PROPERTY IN CONTRACT MATERIAL

- 9.1 Intellectual Property in all Contract Material vests or will vest in the Commonwealth. Unless otherwise specified in item C [*Required Contract Material*], the Service Provider must ensure that the Contract Material is used, copied, supplied or reproduced only for the purposes of performing the Services in accordance with this Agreement.
- 9.2 Clause 9.1 does not affect the ownership of Intellectual Property in any existing Material which is specified in Item N [*Existing Material*], but the Service Provider grants to (or will procure on behalf of) the Commonwealth a permanent, irrevocable, royalty-free, world-wide, non-exclusive licence (including a right of sublicense) to use, reproduce, adapt and exploit any such existing Material in conjunction with the other Contract Material.
- 9.3 If requested by the Department, the Service Provider agrees to bring into existence, sign, execute or otherwise deal with any document which may be necessary or desirable to give effect to this clause 9.
- 9.4 The Service Provider warrants that it is entitled, or will be entitled at the relevant time, to deal with the Intellectual Property in the Contract Material in the manner provided for in this clause 9.

9.5 This clause 9 will survive the expiration or termination of this Agreement.

10. DEALINGS WITH COPIES

10.1 This clause 10 applies to any document, device, article or medium ('copies') in which Commonwealth Material, Contract Material or Confidential Information is embodied.

10.2 Property in all copies vests or will vest in the Commonwealth.

10.3 The Service Provider agrees to establish and maintain procedures to secure all copies against loss and unauthorised access, use, modification or disclosure.

10.4 Upon the expiration or termination of this Agreement the Service Provider agrees to deliver to the Department or otherwise deal with all copies as directed by the Department, subject to any requirement of law binding on the Service Provider in respect of those copies.

10.5 This clause 10 applies subject to any provision to the contrary in Item O [*Dealings with Copies*].

10A. ACCESS TO DOCUMENTS

10A.1 In this clause, 'document' and 'Commonwealth contract' have the same meaning as in the *Freedom of Information Act 1982* (Cth).

10A.2 The Service Provider acknowledges that this Contract is a Commonwealth contract.

10A.3 Where the Department has received a request for access to a document created by, or in the possession of, the Service Provider or any subcontractor that relates to the performance of this Contract (and not to the entry into the contract), the Department may at any time by written notice require the Service Provider to provide the document to the Department and the Service Provider must, at no additional cost to the Department, promptly comply with the notice.

10A.4 The Service Provider must include in any subcontract relating to the performance of this Contract provisions that will enable the Service Provider to comply with its obligations under this clause 10A.

11. DISCLOSURE OF INFORMATION

- 11.1 Subject to clause 11.5, a Party must not, without the prior written approval of the other Party, disclose, any Confidential Information of that other Party to a third party.
- 11.2 A Party may impose any conditions or restrictions it considers appropriate when giving its approval under clause 11.1 and the other Party must comply with any such conditions.
- 11.3 A Party may at any time require the other Party to give, and to arrange for its Personnel to give, undertakings in the form of a Deed, relating to the use and non-disclosure of the first Party's Confidential Information.
- 11.4 If a Party receives a request under clause 11.3 it must arrange promptly for all such undertakings to be given.
- 11.5 The obligations on the Parties under this clause 11 will not be taken to have been breached to the extent that the Confidential Information is authorised or required by law to be disclosed. In particular, but without limitation, the obligations in this clause 11 will not be taken to have been breached to the extent that Confidential Information:
- (a) is disclosed by a Party to its Personnel solely in order to comply with obligations, or to exercise rights, under this Agreement;
 - (b) is disclosed to a Party's internal management personnel, solely to enable the effective management of the Services or the auditing of Agreement-related activities;
 - (c) is disclosed by the Department to the responsible Minister;
 - (d) is disclosed by a Party in response to a request by a House or Committee of the Parliament of the Commonwealth of Australia;
 - (e) is shared by the Department within the Department's organisation, or within the Commonwealth, where this serves the legitimate interests of the Commonwealth; or
 - (f) is in the public domain other than due to a breach of this clause 11.
- 11.6 Where a Party discloses Confidential Information to another person pursuant to clause 11.5, the disclosing Party must notify the receiving person that the information is confidential.
- 11.7 In the circumstances referred to in clauses 11.5a, 11.5b and 11.5e, the disclosing Party agrees not to disclose the information unless the receiving person agrees to keep the information confidential.

- 11.8 The Parties may agree in writing, after the Commencement Date, that certain additional information is to constitute Confidential Information for the purposes of this Agreement. Any such documentation is incorporated into, and becomes part of, the Agreement on the date by which both Parties signed the documentation.
- 11.9 Notwithstanding the expiration or termination of this Agreement, the obligations in this clause 11 continue for the period (if any) specified in Item S [*Confidential Information*] or for the period otherwise agreed in writing by the Parties.
- 11.10 This clause 11 does not detract from any of the Service Provider's obligations under the *Privacy Act 1988* (Cth), or under clause 12, in relation to the protection of Personal Information.

12. PROTECTION OF PERSONAL INFORMATION

[Note: If contracting with the following state or territory governments, Australian Capital Territory, Northern Territory, South Australia, Victoria, New South Wales, or Tasmania please contact the Legal Section for alternative words for clause 12. Delete this note prior to forwarding to Service Provider.]

- 12.1 This clause applies only where the Service Provider deals with Personal Information when, and for the purpose of, providing the Services under this Agreement.
- 12.2 The Service Provider acknowledges that it is a 'contracted service provider' within the meaning of section 6 of the *Privacy Act 1988* (Cth) (the Privacy Act), and agrees in respect of the provision of the Services under this Agreement:
- (a) to use or disclose Personal Information obtained during the course of providing the Services under this Agreement, only for the purposes of this Agreement;
 - (b) not to do any act or engage in any practice that, if done by or engaged in by an agency, would breach an Information Privacy Principle (IPP) contained in section 14 of the Privacy Act;
 - (c) to carry out and discharge the obligations contained in the IPPs as if it were an agency under the Privacy Act;
 - (d) to notify individuals whose Personal Information the Service Provider holds, that complaints about acts or practices of the Service Provider may be investigated by the Privacy Commissioner who has power to award compensation against the Service Provider in appropriate circumstances;

- (e) not to use or disclose Personal Information or engage in an act or practice that would breach section 16F (direct marketing), an NPP (particularly NPPs 7 to 10) or an APC, where that section, NPP or APC is applicable to the Service Provider, unless:
 - (i) in the case of section 16F – the use or disclosure is explicitly required to discharge an obligation under this Agreement; or
 - (ii) in the case of an NPP or an APC –the activity or practice is engaged in for the purpose of discharging an obligation under this Agreement;
 - (f) to comply with section 95C of the Privacy Act and disclose in writing to any person who asks, the content of the provisions of this Agreement (if any) that are inconsistent with an NPP or an APC binding a Party to this Agreement;
 - (g) to immediately notify the Department if the Service Provider becomes aware of a breach or possible breach of any of the obligations contained in, or referred to in, this clause 12, whether by the Service Provider, its Personnel or a subcontractor;
 - (h) to ensure that any Service Provider Personnel who is required to deal with Personal Information for the purposes of this Agreement is made aware of the obligations of the Service Provider set out in this clause 12; and
 - (j) to comply with any directions, guidelines, determinations or recommendations referred to or relating to the matters set out in Item T [*Privacy Directions, Guidelines, Determinations and Recommendations*], to the extent that they are consistent with the requirements of this clause 12.
- 12.3 The Service Provider must ensure that any subcontract entered into for the purpose of fulfilling its obligations under this Agreement contains provisions to ensure that the subcontractor has the same awareness and obligations as the Service Provider has under this clause, including the requirement in relation to subcontracts.
- 12.4 The Service Provider agrees to indemnify the Commonwealth in respect of any loss, liability or expense suffered or incurred by the Commonwealth which arises directly or indirectly from a breach of any of the obligations of the Service Provider under this clause 12, or a subcontractor under the subcontract provisions referred to in subclause 12.3.
- 12.5 In this clause 12, the terms ‘agency’, ‘approved privacy code’ (APC), ‘Information Privacy Principles (IPPs), and ‘National Privacy Principles’ (NPPs) have the same meaning as they have in section 6 of the Privacy Act.

12.6 The provisions of this clause 12 survive termination or expiration of this Agreement.

13. COMPLIANCE WITH OTHER LAWS

13.1 The Service Provider agrees, in carrying out this Agreement, to comply with all relevant legislation of the Commonwealth or of any State, Territory or local authority, and in particular:

- (a) the *Crimes Act 1914* (Cth);
- (b) the *Racial Discrimination Act 1975* (Cth);
- (c) the *Sex Discrimination Act 1984* (Cth);
- (d) the *Disability Discrimination Act 1992* (Cth); and
- (e) the *Equal Opportunity for Women in the Workplace Act 1992* (Cth).

14. CONFLICT OF INTEREST

14.1 The Service Provider warrants that, to the best of its knowledge after making diligent inquiry, at the Commencement Date no Conflict exists or is likely to arise in the performance of the Services.

14.2 If, during the performance of the Services a Conflict arises, or appears likely to arise, the Service Provider agrees to:

- (a) notify the Department immediately in writing;
- (b) make full disclosure of all relevant information relating to the Conflict;
and
- (c) take such steps as the Commonwealth may reasonably require to resolve or otherwise deal with the Conflict.

14.3 If the Service Provider does not notify the Department or is unable or unwilling to resolve or deal with the Conflict as required, the Commonwealth may terminate this Agreement in accordance with the provisions of clause 21 [*Termination for Default*].

14.4 The Service Provider agrees that it will not, and will use its best endeavours to ensure that its Personnel and subcontractors do not, engage in any activity or obtain any interest during the course of this Agreement that is likely to create a Conflict.

15. CONDUCT AT COMMONWEALTH PREMISES

15.1 The Service Provider agrees that when using the Commonwealth's premises or facilities for the purposes of the Services, it will comply with all reasonable directions and procedures relating to occupational health, safety and security in operation at those premises or in regard to those facilities (including the Commonwealth's smoke-free work-place policy) whether specifically drawn to the attention of the Service Provider or as might reasonably be inferred from the circumstances.

16. ACCESS TO SERVICE PROVIDER'S PREMISES

16.1 The Service Provider agrees to give to the Department, or to any persons authorised in writing by the Department, reasonable access to premises occupied by the Service Provider where the Services are being performed, and permit those persons to inspect and take copies of any Material relevant to the Services.

16.2 The rights referred to in clause 16.1 are subject to:

- (a) the Department providing reasonable prior notice;
- (b) the Service Provider's reasonable security procedures; and
- (c) if appropriate, execution of a deed of confidentiality relating to non-disclosure of the Service Provider's Confidential Information.

16.3 Without in any way affecting the statutory powers of the Auditor-General under the *Auditor-General Act 1997* (Cth), and subject to the provisions of that Act, the Auditor-General is a person authorised for the purposes of this clause 16.

16.4 This clause 16 will survive the expiration or termination of this Agreement.

17. INDEMNITY

17.1 The Service Provider indemnifies the Commonwealth from and against any:

- (a) costs or liability incurred by the Commonwealth;
- (b) loss of or damage to property of the Commonwealth; or
- (c) loss or expense incurred by the Commonwealth in dealing with any claim against it, including legal costs and expenses on a solicitor/own client basis and the cost of time spent, resources used or disbursements paid by the Commonwealth,

arising from either:

- (d) a breach by the Service Provider of this Agreement; or
 - (e) an act or omission involving fault on the part of the Service Provider or its Personnel in connection with this Agreement.
- 17.2 The Service Provider's liability to indemnify the Commonwealth under clause 17.1 will be reduced proportionately to the extent that any act or omission involving fault on the part of the Commonwealth contributed to the relevant cost, liability, damage, loss or expense.
- 17.3 The right of the Commonwealth to be indemnified under this clause 17 is in addition to, and not exclusive of, any other right, power or remedy provided by law, but the Commonwealth is not entitled to be compensated in excess of the amount of the relevant cost, liability, damage, loss or expense.
- 17.4 In this clause 17:
- (a) "Commonwealth" includes officers, employees and agents of the Commonwealth; and
 - (b) "fault" means any negligent or unlawful act or omission or wilful misconduct.
- 17.5 This clause 17 will survive the expiration or termination of this Agreement.

18. INSURANCE

- 18.1 The Service Provider agrees, for so long as any obligations remain in connection with this Agreement (including those that survive the expiration or termination of this Agreement):
- (a) to effect and maintain the insurance specified in Item P [*Insurance*]; and
 - (b) upon request, to provide proof of insurance acceptable to the Department.

19. DISPUTE RESOLUTION

- 19.1 The Parties agree that any dispute arising during the course of this Agreement will be dealt with as follows:
- (a) first, the Party claiming that there is a dispute will send to the other Party a notice setting out the nature of the dispute;
 - (b) secondly, the Parties will have 10 Business Days after the sending of the notice referred to in paragraph (a), to either:

- (i) resolve the dispute by direct negotiation;
 - (ii) submit the dispute to an independent third person who may have the authority to direct some form of resolution; or
 - (ii) submit the dispute to mediation or some other form of alternative dispute resolution procedure; and
- (c) lastly, if:
- (i) there is no resolution or agreement; or
 - (ii) there is a submission to an independent third person, mediation or some other form of alternative dispute resolution procedure, but there is no resolution within 15 Business Days of the submission, or such extended time as the Parties may agree in writing before the expiration of the 15 Business Days,

then, either Party may commence legal proceedings.

19.2 Despite the existence of a dispute, the Service Provider must (unless requested in writing by the Department not to do so) continue to perform the Services.

19.3 This clause 19 does not apply to:

- (a) action by either Party under or purportedly under clause 21 [*Termination For Default*], or
- (b) action by the Commonwealth under or purportedly under clause 3.2 [*Fees, Allowances & Assistance*], or clause 20 [*Termination and Reduction for Convenience*].

nor does it preclude either Party from commencing legal proceedings for urgent interlocutory relief.

19.4 Each Party will bear its own costs of complying with this clause 19, and the Parties must equally bear the cost of any third person appointed by, or on behalf of, the Parties for the purpose of resolving a dispute in accordance with clause 19.1.

20. TERMINATION AND REDUCTION FOR CONVENIENCE

- 20.1 The Commonwealth may immediately terminate this Agreement or reduce the scope of the Services by giving written notice to the Service Provider.
- 20.2 Upon receipt of a notice of termination or reduction referred to in clause 20.1 the Service Provider agrees to:
- (a) stop or reduce work as specified in the notice;
 - (b) take all available steps to minimise loss resulting from that termination or reduction and to protect Commonwealth Material (including any Commonwealth Confidential Information) and Contract Material; and
 - (c) continue work on any part of the Services not affected by the notice.
- 20.3 Where there has been a termination under clause 20.1, the Commonwealth will be liable only for:
- (a) the fees, allowances and assistance referred to in clause 3 [*Fees, Allowances & Assistance*] to the extent that those payments relate to services rendered before the effective date of termination; and
 - (b) reasonable costs incurred by the Service Provider and directly attributable to the termination.
- 20.4 Where there has been a reduction in the scope of the Services, the Commonwealth's liability to pay the fees or allowances, or meet the costs or provide the facilities and assistance referred to in clause 3 [*Fees, Allowances & Assistance*] will, unless there is agreement in writing to the contrary, abate in accordance with the reduction in the scope of the Services.
- 20.5 The Commonwealth will not be liable to pay compensation under clause 20.3(b) in an amount which would, in addition to any amounts paid or due, or becoming due, to the Service Provider under this Agreement, together exceed the fees set out in Item F [*Fees*].
- 20.6 The Service Provider will not be entitled to compensation for loss of prospective profits.

21. TERMINATION FOR DEFAULT

- 21.1 Where a Party fails to satisfy any of its obligations under this Agreement, the other Party, if it considers that the failure is:
- (a) not capable of remedy, may by written notice terminate this Agreement immediately;

- (b) capable of remedy, may by written notice require that the failure be remedied within the time specified in the notice and, if not remedied within that time, may terminate this Agreement immediately by giving a second notice.

21.2 The Commonwealth may also, by notice terminate this Agreement immediately (but without prejudice to any prior right of action or remedy which either Party has or may have) if the Service Provider:

- (a) being a corporation, comes under one of the forms of external administration referred to in chapter 5 of the *Corporations Act 2001*, or an order has been made for the purpose of placing the corporation under external administration; or
- (b) being an individual, becomes bankrupt or enters into a scheme of arrangement with creditors.

22. NEGATION OF EMPLOYMENT, PARTNERSHIP AND AGENCY

22.1 The Service Provider agrees not to represent itself, and to use its best endeavours to ensure that its Personnel do not represent themselves, as being an officer, employee, partner or agent of the Commonwealth, or as otherwise able to bind or represent the Commonwealth.

22.2 The Service Provider is not by virtue of this Agreement an officer, employee, partner or agent of the Commonwealth, nor does the Service Provider have any power or authority to bind or represent the Commonwealth.

23. WAIVER

23.1 If a Party does not exercise (or delays in exercising) any of its rights, that failure or delay does not operate as a waiver of those rights.

23.2 A single or partial exercise by a Party of any of its rights does not prevent the further exercise of any right by that Party.

23.3 In this clause 23, 'rights' means rights or remedies provided by this Agreement or at law.

24. ASSIGNMENT AND NOVATION

24.1 The Service Provider cannot assign its obligations, and agrees not to assign its rights, under this Agreement without, in either case, prior approval in writing from the Department.

- 24.2 The Service Provider agrees not to consult with any other person for the purposes of entering into an arrangement that will require novation of the Agreement without first consulting the Department.
- 24.3 The Department will not withhold approval of an assignment to a wholly owned subsidiary of the Service Provider if:
- (a) the proposed assignee is sufficiently capitalised to meet all of the Service Provider's obligations under the Agreement, including indemnities;
 - (b) Specified Personnel continue to provide the Services, subject to the terms of this Agreement;
 - (c) the Service Provider guarantees the performance of this Agreement by the assignee and any liability on the part of the assignee arising under this Agreement;
 - (d) the proposed assignee fully complies with all criteria applied to the Service Provider as a tenderer for provision of the Services; and
 - (e) the Service Provider provides to the Department all information reasonably required to determine compliance under clause 24.3(d).

25. NOTICES

- 25.1 Any notice, request or other communication to be given under this Agreement must be in writing and dealt with as follows:
- (a) if given by the Service Provider to the Department – marked for the attention of the Project Officer at the address indicated in Item Q [*Commonwealth's Address for Notices*] or as otherwise notified by the Department; or
 - (b) if given by the Department to the Service Provider– signed by the Project Officer and marked with the address indicated in Item R [*Service Provider's Address for Notices*] or as otherwise notified by the Service Provider.
- 25.2 Any notice, request or other communication is to be delivered by hand, sent by pre-paid post or transmitted electronically, and if it is sent or transmitted electronically a copy is to be sent to the addressee by pre-paid post.
- 25.3 A notice, request or other communication will be deemed to be received:
- (a) if delivered by hand, upon delivery;

- (b) if sent by pre-paid ordinary post within Australia, upon the expiration of 2 Business Days after the date on which it was sent; and
- (c) if transmitted electronically, upon receipt by the sender of an acknowledgment that the communication has been properly transmitted to the recipient.

25.4 A notice received after 5pm or on a day that is not a Business Day is deemed to be given on the next Business Day.

26. MORAL RIGHTS

26.1 For the purposes of this clause 26, 'Permitted Acts' means any of the following classes or types of acts or omissions;

- (a) using, reproducing, adapting or exploiting all or any part of the Contract Material, with or without attribution of authorship;
- (b) supplementing the Contract Material with any other Material;
- (c) using the Contract Material in a different context to that originally envisaged; and
- (d) the acts or omissions specifically set out in Item U [*Moral Rights*],

but does not include false attribution of authorship.

26.2 Where the Service Provider is a natural person and the author of the Contract Material, he or she consents to the performance of the Permitted Acts by the Commonwealth or any person claiming under or through the Commonwealth.

26.3 If clause 26.2 does not apply, the Service Provider agrees:

- (a) to obtain from each author a written consent that extends directly or indirectly to the performance of the Permitted Acts by the Commonwealth or any person claiming under or through the Commonwealth (whether occurring before or after the consent is given); and
- (b) to provide, if requested, the executed original of any such consent to the Department.

26.4 The Service Provider acknowledges that its attention has been drawn to the Department's general policies and practices regarding moral rights as described in Item U [*Moral Rights*].

27. GENERAL SECURITY OBLIGATIONS

- 27.1 The Service Provider agrees to ensure that its Personnel comply with:
- (a) all relevant security requirements specified in the Commonwealth Protective Security Manual 2005;
 - (b) the security requirements specified in Item V of the Schedule; and
 - (c) any variations or additions to these security requirements that the Department (in its absolute discretion) notifies the Service Provider in writing, from the date specified in the notice (or 7 days after it receives the notice if no date is specified).
- 27.2 If the Service Provider can substantiate that changes to the security requirements pursuant to clause 27.1 (c) have cost implications for it, the Service Provider may apply to the Department for a variation in the fees payable as specified in Item F.
- 27.3 The Service Provider acknowledges that in performing the Agreement, it may become subject to certain statutory provisions relating to security and security issues, and agrees to ensure that its Personnel (including Specified Personnel) are aware of, and comply, with those statutory provisions.

28. PERSONNEL SECURITY

- 28.1 The Service Provider agrees to obtain prior written authorisation from the Department for any of its Personnel who may be required to:
- (a) enter secure areas in the Department's building or places;
 - (b) work with the Department's Personnel for extended periods;
 - (c) have access to Security Classified Information, or valuable assets; or
 - (d) hold a particular kind of security clearance that the Department notifies to the Service Provider.
- 28.2 The Service Provider agrees to ensure that all of the Personnel that it proposes to use are:
- (a) are of good fame and character;
 - (b) are properly qualified for the tasks they are to perform; and
 - (c) will act in all circumstances in a fit and proper manner while they are carrying out work under the contract.
- 28.3 The Service Provider agrees to provide any information the Department reasonably requests to enable the Department to investigate whether particular Personnel of the Service Provider should be authorised.

- 28.4 The Department may require that particular Personnel of the Service Provider hold a particular level of Commonwealth security clearance.
- 28.5 The Department agrees that it will not unreasonably withhold authorisation.
- 28.6 The Department agrees to notify the Service Provider of:
- (a) the Personnel of the Service Provider who have been granted authorisation ('Authorised Persons');
 - (b) the type and level of Commonwealth security clearance (if any) given to each Authorised Person; and
 - (c) the period during which the authorisation is effective; and
 - (d) the Personnel of the Service Provider who have not been granted authorisation.
- 28.7 The Service Provider agrees to acknowledge receipt of any notice provided under clause 28.6 by signing and returning a copy of the notice to the Department.
- 28.8 The Service Provider must promptly notify the Department of any change in an Authorised Person's circumstances that, in the Service Provider's reasonable opinion, is likely to affect the Department's authorisation of that person.
- 28.9 The Department may, at any time, on reasonable grounds, without any liability whatsoever, withdraw, limit or suspend its authorisation of a particular person, and in such event must notify the Service Provider accordingly.
- 28.10 In the event referred to in clause 28.9, the Service Provider agrees, upon request, to propose and make available another person for authorisation by the Department under this clause within a reasonable time and without inconvenience or cost to the Department.
- 28.11 The Service Provider must ensure that its Personnel undertake the training specified by the Department in Item V.

29. INFORMATION SECURITY

- 29.1 The Service Provider agrees not to permit any of its Personnel to have any access to Security Classified Information unless:
- (a) the relevant person has been cleared to the appropriate security level;
 - (b) the Department has given written authority under clause 28;

- (c) the relevant person has undergone the training specified in Item V relating to access and use of Security Classified Information.
- 29.2 The Service Provider agrees to inform the Department immediately if it becomes aware that any unauthorised person has had access to Security Classified Information.
- 29.3 The Service Provider agrees not to perform the Services outside Australia, or transfer Security Classified Information outside Australia, without the Department's prior written approval.

30. PHYSICAL SECURITY

- 30.1 The Service Provider may only access the Department's premises if it:
 - (a) has the Department's written authorisation; and
 - (b) complies with the Department's requirements set out in this contract or otherwise notified by the Department.
- 30.2 The Service Provider must ensure that its Personnel safeguard any keys or passes or other Material detailing access arrangements that are provided to the Service Provider for the purposes of this Agreement.
- 30.3 The Service Provider agrees to protect any Official Resources it possesses or controls to the same extent as if it were the Department, including ensuring that unauthorised persons cannot access any Official Information.

31. SECURITY REPORTS

- 31.1 The Service Provider agrees to notify the Department immediately if it becomes aware that a Security Incident has occurred.
- 31.2 The Service Provider agrees to supply written security reports to the Department in a form and at the times specified in Item V including the following information:
 - (a) all Security Incidents, including steps taken by the Service Provider to address these;
 - (b) any perceived security problems;
 - (c) where appropriate, recommendations for security improvements;
 - (d) proposed and actual changes of its Personnel; and
 - (e) any other information which the Department reasonably requires.

THE SCHEDULE

A. Proposal and Quotation (see Purpose)

The Purpose statement at the Agreement's beginning refers in paragraph B to this Item (although those paragraph numbers can simply be amended if necessary).

B. 'Services' (see clauses 1.1 and 2.1)

C. Required Contract Material (see clauses 1.1 and 2.1)

other purpose(s) for which the Service Provider may use the Contract Material.

D. Standards and Best Practice (see clause 2.1)

Standards vary depending on the nature of the Services, but some which may be worth referring to in many situations would be:

The Commonwealth Style Manual, AGPS, Canberra (latest edition)

Privacy Advisory Committee, *Outsourcing and Privacy: Advice for Commonwealth agencies considering contracting out (outsourcing) information technology and other functions*, Privacy Commissioner, August, 1994 (a stand-alone document which can also be found in: Privacy Commissioner, *Federal Privacy Handbook: A Guide to Federal Privacy Law and Practice*, Redfern Legal Centre Publishing, Sydney, Release 4, January 1995)

Australian Standards for Document Management (AS ISO 15489)

MAB/MIAC: *Ethical Standards and Values in the Australian Public Service*, 1996

E. Commencement and Time-frame (see clauses 1.7 and 2.1)

Commencement Date

Timeframe

F. Fees (see clauses 3.1 & 20.5)

Additional Services

[Note: Insert the hourly or daily rates that the Department will pay the Service Provider for any Additional Services the Service Provider is required to provide and state whether these rates are GST-inclusive]

The Department shall pay the Service Provider within 30 days of the delivery of a correctly rendered invoice to the Department. If this period ends on a day that is not a Business Day, payment is required on the next Business Day.

G. Allowances and Costs (see clause 3.1)

The Service Provider shall be reimbursed within 30 days of the Service Provider delivering a correctly rendered invoice to the Department. If this period ends on a day that is not a Business Day, reimbursement is required on the next Business Day.

H. Facilities and Assistance (see clause 3.1)

I. Invoice Procedures (see clause 3.3)

Correctly addressed invoices must be forwarded by the Service Provider each month including the following information:

- (a) title of Services;
- (b) name of Project Officer;
- (c) fees and expenses will be invoiced on a monthly basis.
- (d) contract number or purchase order number (if any);

The due date for payment by the Commonwealth is 30 days after delivery of a correctly rendered invoice.

- J. ‘Specified Personnel’ (see clauses 1.1 and 6)**
- K. ‘Project Officer’ (see clauses 1.1 and 2.1)**
- L. Material to be Provided by Commonwealth (see clause 8.1)**
- M. Use of Commonwealth Material (see clause 8.3)**
- N. Existing Material (see clause 9.2)**
- O. Dealings with Copies (see clause 10.5)**
- P. Insurance (see clause 18.1)**
- public liability insurance for an amount of not less than 10 million dollars; and
 - professional indemnity insurance for an amount of not less than 5 million dollars.
- Q. Commonwealth’s Address for Notices (see clause 25.1)**
- s).
- R. Service Provider’s Address for Notices (see clause 25.1)**
- S. Confidential Information (see clauses 1.1 and 11.10)**
- T. Privacy Directions, Guidelines, Determinations and Recommendations (see clause 12.2)**
- U. Moral Rights (see clause 26)**
- V. Security Requirements (see clauses 27 - 31)**

SIGNED as an Agreement.

SIGNED on behalf of the)
COMMONWEALTH OF AUSTRALIA)
by ^name signatory^ _____)
^name signatory's position^ _____) _____

IN THE PRESENCE OF)
^name witness^ _____) _____

SIGNED by)
^insert Service Provider's full name^ _____)
_____)

IN THE PRESENCE OF)
^name witness^ _____) _____

OR the attestation prescribed in company Articles of Association, eg

THE COMMON SEAL OF)
^name Corporation^ _____)
was hereto duly affixed in the presence of)
^name director^ _____) _____

(Director)

^name Director or Secretary^ _____) _____

(Director/Secretary)

OR

EXECUTED by [name of company])

in accordance with Section 127(1) of the)

Corporations Act 2001 (Cth) by)

authority of its directors)

in the presence of)

^name director^ _____)

(Signature of Director)

^name Director or Secretary^ _____)

(Signature of Director/Secretary)

DRAFT